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MEMO ENDORSED

August 26, 2013

Via Federal Express Mail

The Honorable William H. Pauley III
United States District Judge
United States Court House
500 Pearl Street
New York, New York 10007

USDC SDNY

DOCUMENT

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AUG 27 2013

CHAMBERS OF
WILLIAM H. PAULEY
U.S.D.J.

**Re: At Last Sportswear, Inc. v. Kamens,
Kamens v. At Last Sportswear, Inc., Duchon, Ahuja and Israni (13-cv-2355-WHP)**

Dear Judge Pauley:

We represent Third-Party Defendants At Last Sportswear Inc., Bonni Duchon, Sunil Ahuja and Sanjay Israni in the above referenced matter. We are writing pursuant to Individual Practice Rule III.A to request a pre-motion conference in connection with Third-Party Defendants' anticipated motion to strike Michael Kamens' untimely demand for a jury trial. Third-Party Defendants respectfully submit that, for the reasons set forth below, the demand for a jury trial in the Amended Counterclaims and Third-Party Complaint filed by Kamens is untimely and therefore should be denied pursuant to Federal Rule of Civil Procedure 38(d).

Procedural History

Kamens filed his Answer, Counterclaims and Third-Party Complaint on May 24, 2013. Kamens' Answer, Counterclaims and Third-Party Complaint did not include a jury demand. During the parties' conference on August 2, 2013, Your Honor specifically noted that there was no jury demand and that you would try this matter. On August 16, 2013, Kamens filed an Amended Counterclaims and Third-Party Complaint including a demand for a jury trial.

Jury Trial Demand Should Be Dismissed

Pursuant to Fed. R. Civ. P. 38(b), a party may demand a jury trial by serving other parties with a written demand "no later than 14 days after the last pleading directed to the issue is served." A party's failure to properly serve and file the demand is a waiver of the right to a jury trial. See Fed. R. Civ. P. 38(d). While Kamens could have included his jury trial demand in his first set of pleadings, he failed to do so. He also failed to serve Third-Party Defendants a demand within 14 days of his Answer. Given that Kamens demanded a jury trial on August 16, 2013, more than 14 days after he filed the first Answer, he has waived his right to a jury trial. See *Sait Electronics, S.A., v. Schiebel*, 846 F.Supp.17, 18 (S.D.N.Y. 1994) (finding party's failure to demand jury trial until months after filing of answer to be a waiver of right to jury trial). Therefore, Third-Party Defendants respectfully submit that Kamens' untimely demand should be dismissed.

August 26, 2013


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For the foregoing reasons, Third-Party Defendants respectfully request that this Court grant their leave to file a motion to strike. Thank you for your attention and consideration to this matter.

Respectfully submitted,

JACKSON LEWIS LLP



Diane Windholz

DW/ra

cc: Walker G. Harman, Esq (via email; counsel for Michael Kamens)
Mark J. Alonso, Esq. (via email; counsel for At Last Sportswear, Inc.)
Catania Facher, Esq. (via email; counsel for At Last Sportswear, Inc.)

Application granted. The Court will
hold a conference September 12, 2013
at 5:00 p.m.

SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J. 8/30/13